



October 15, 2001

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-4650

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153363.

The Texas Department of Criminal Justice (the "department") received a request for interview documentation and copies of the responses by the requestor and the selected applicant in a specified job posting. You state that your request for a ruling from this office is only with respect to the submitted interview questions and answers. We therefore assume that the department has released to the requestor any other responsive information. If not, such information must promptly be released. Gov't Code §§ 552.301, .302. You assert that the submitted questions, recommended responses, and actual responses are excepted from disclosure under section 552.122 of the Government Code.<sup>1</sup> You also assert that the social security numbers in the submitted documents are excepted from disclosure under section 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(3) of the Government Code provides that, among other information, the social security number of an employee of the department is excepted from required public disclosure, regardless of whether the employee elected under section 552.024 of the Government Code to make this information confidential. *See* Gov't Code §§ 552.024, .117. In accordance with section 552.117(3), we agree that the department must withhold from the requestor the social security numbers we have marked.<sup>2</sup>

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<sup>1</sup>We note that the written request states that it is "minus the questions and recommended responses." It thus appears from the wording of the request that it does not encompass the submitted questions and recommended responses. If this information is not responsive to the request, it need not be released.

<sup>2</sup>We did not mark the social security number of the requestor, in that we believe he has a special right of access to this information. *See* Gov't Code § 552.023.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). This office has stated that a "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). When answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122. *Id.* at 8; Attorney General Opinion JM-640 at 3 (1987). The question of whether specific information falls within the ambit of section 552.122(b) must be determined on a case-by-case basis. ORD 626 at 6. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of further examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

You seek to withhold the submitted questions and their corresponding recommended and actual responses. We understand you to represent to this office that the same questions and model responses are used repetitively. Further, your representations indicate that the department's employment selection process includes structured interviews in which all interviewees for the type of position in question are asked these same questions. We agree that the questions and corresponding recommended and actual responses that we have marked may be withheld under section 552.122. We find that the remaining information does not meet the definition of a test item, and is subject to release.

In summary, pursuant to section 552.117 of the Government Code, the department must withhold the social security numbers we have marked. Pursuant to section 552.122, the department may withhold the marked questions and their recommended and actual responses. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

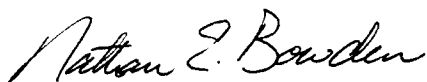
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 153363

Enc: Submitted documents

c: Mr. William B. Fuller  
1806 A Street  
Floresville, Texas 78114  
(w/o enclosures)